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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE, Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

2011 DEC 23 A 9:57

AZ CORP COMMISSION
DOCKET CONTROL

In the matter of:

RADICAL BUNNY, L.L.C., an Arizona
limited liability company,

HORIZON PARTNERS, L.L.C., an Arizona
limited liability company,

TOM HIRSCH (aka THOMAS N. HIRSCH)
and DIANE ROSE HIRSCH, husband and
wife,

BERTA FRIEDMAN. WALDER (aka
BUNNY WALDER), a married person,

HOWARD EVAN WALDER, a married
person,

HARISH PANNALAL SHAH and
MADHAVI H. SHAH, husband and wife,

Respondents.

DOCKET NO. S-20660A-09-0107

**SECURITIES DIVISION'S RESPONSE IN
OPPOSITION TO RESPONDENTS'
PROPOSED HOFFMANN DEPOSITION
EXCERPTS**

(Assigned to the Hon. Lyn Farmer)

Arizona Corporation Commission
DOCKETED

DEC 23 2011

DOCKETED BY

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") hereby responds in opposition to the Respondents' Proposed Hoffmann Deposition Excerpts for the following reasons. First, Respondents seek to have the Administrative Law Judge view all of day two (i.e., approximately four hours) of the video of the Hoffmann Deposition. Day one lasted approximately eight hours. It is important to point out that Mr. Hoffmann's deposition was taken by the attorneys for the plaintiffs in the pending civil class action lawsuit for the sole purpose of attempting to establish sufficient "facts" to support their Motion for Leave to File an Amended Complaint against Mr. Hoffmann's employer, Quarles & Brady. Accordingly, the form of the questions was leading (i.e., cross-examination style), to which Mr.

1 Hoffmann's attorneys routinely objected. The result, the examination was acrimonious and
2 antagonistic. Accordingly, it would be difficult for the Administrative Law Judge to determine
3 whether Mr. Hoffmann was uncomfortable with the "questions" rather than being frustrated with
4 the fact that words were being "put into his mouth" in an antagonistic manner over protracted
5 period of time. Should Respondents' desire to have the Administrative Law Judge again observe
6 Mr. Hoffmann's demeanor, then they should be required to present him in person for examination.

7 Second, in addition to the two exhibits which are the subject of the Motion to Reopen
8 Hearing, Respondents seek to include substantive evidence regarding an additional nine exhibits
9 which were not admitted into evidence during the administrative hearing without allowing the
10 Division the opportunity to examine Mr. Hoffmann regarding those same exhibits.¹ This is
11 extremely prejudicial to the Division, whether the testimony is included in the form of the video or
12 the written transcript. With the exception of one exhibit which was a chart prepared by Mr.
13 Hoffmann during his deposition, Respondents have already conceded that all of the remaining
14 exhibits were in the possession of the Respondents at the time of the administrative hearing. They
15 nevertheless chose not to examine Mr. Hoffmann regarding those exhibits at that time. Electing a
16 new strategy, Respondents now seek not only to include substantive evidence regarding these
17 additional nine exhibits in the administrative hearing record, but also to deprive the Division of the
18 opportunity to examine Mr. Hoffmann in a manner which would allow Mr. Hoffmann to provide *in*
19 *his own words* all relevant information regarding those same documents. In addition, the
20 Respondents seek to exclude ten pages of day two of the deposition transcript (i.e., page 314, line
21 22 through page 324, line 1) in which Mr. Hoffmann was able to elaborate and/or clarify his
22 responses to opposing counsel's leading questions.

23 Finally, the only relevant portion of the Hoffmann Deposition transcript with respect to the

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25 ¹ Specifically, the additional nine Hoffmann Deposition exhibits are Exhibits 66 (handwritten chart) through 70, 73, 74,
26 76 (first two pages), and 79 are not in evidence in the administrative hearing record. With respect to the remaining
exhibits utilized in day two of Mr. Hoffmann's deposition, (a) Exhibits 75, 76 (last page only), 77, 78, and 80 were
admitted into evidence in the administrative hearing as Exhibits S-22(m), S-45(c), S-45(d), S16(b) (as completed by an
investor), and S-17 (as completed by a different investor); and (b) Exhibits 71 and 72 are the subject of the Motion to
Reopen Hearing.

1 Motion to Reopen Hearing are page 282, line 2 through page 292, line 7 and Exhibits 71 and 72.

2 For the reasons set forth above, the Division opposes the inclusion of the videotape as well
3 as any other portion of the Hoffmann Deposition other than page 282, line 2 through page 292, line
4 7 and Exhibits 71 and 72 in administrative hearing record.

5 RESPECTFULLY SUBMITTED this 23rd day of December, 2011.

6 

7 Julie Coleman
8 Chief Counsel of Enforcement for the Securities
9 Division of the Arizona Corporation Commission

10 ORIGINAL and 8 copies of the foregoing
11 filed the 23rd day of December, 2011, with:

12 Docket Control
13 Arizona Corporation Commission
14 1200 W. Washington St.
15 Phoenix, AZ 85007

16 COPY of the foregoing hand-delivered
17 the 23rd day of December, 2011, to:

18 Lyn Farmer
19 Administrative Law Judge
20 Arizona Corporation Commission
21 1200 W. Washington St.
22 Phoenix, AZ 85007

23 COPY of the foregoing mailed
24 the 23rd day of December, 2011, to:

25 Michael J. LaVelle
26 LAVELLE & LAVELLE, PLC
2525 E. Camelback Road, Suite 888
Phoenix, AZ 85016
Attorneys for Respondents

By: 